LE COPY

FILED
JAN 8 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1958.

No. 169

GROCERY DRIVERS UNION LOCAL 848, etc., *et al.*,

Appellants,

vs.

SEVEN UP BOTTLING COMPANY OF LOS ANGELES, INCORPORATED,

Appellees.

On Appeal From the Supreme Court of the State of California.

SUPPLEMENTARY JURISDICTIONAL STATEMENT.

STEVENSON & HACKLER,
JOHN C. STEVENSON,
CLARENCE E. TODD,
CHARLES K. HACKLER,
By HERBERT M. ANSELL,
1616 West Ninth Street,
Los Angeles 15, California,
Attorneys for Defendants and Appellants.

HERBERT M. ANSELL,
Of Counsel.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

IN THE

Supreme Court of the United States

October Term, 1958.

No. 169

GROCERY DRIVERS UNION LOCAL 848, etc., *et al.*,

Appellants,

vs.

SEVEN UP BOTTLING COMPANY OF LOS ANGELES, INCORPORATED,

Appellees.

On Appeal From the Supreme Court of the State of California.

SUPPLEMENTARY JURISDICTIONAL STATEMENT.

The basis of this appeal is that an award for damages under the California Jurisdictional Strikes Act is repugnant to the National Labor Relations Act when applied to a labor dispute affecting interstate commerce.

The following facts distinguish the instant case from *Garmon* and justify its separate consideration:

1. The state court after hearing voluminous conflicting evidence on the subject ruled that the Seven Up Employees' Association was not a labor organization "financed in whole or in part, interfered with, dominated or

controlled by the employer" and therefore awarded damages on the sole ground that a jurisdictional dispute existed. In making this determination, the trial court received and evaluated the same type of evidence that the National Labor Relations Board would receive and evaluate in a complaint proceeding under Section 8(a)(2) of the Federal Act.

The peaceful picketing by the Union which was the basis of the state damage award would constitute "protected concerted activity" under Federal law if the National Labor Relations Board concluded, contrary to the state court, that the evidence established company interference, domination, or control of the Association. (*Mastro Plastics Corp. v. National Labor Relations Board*, 350 U. S. 270, 100 L. Ed. 309.)

2. All union picketing was peacefully conducted at retail stores carrying the Seven Up Company's product, that is, at the premises of the secondary employers. The trial court's sole finding was that such Union conduct "interfered" with the Company's operation. This squarely presents the question as to whether, through Section 303(a)(1) and (b) of the Federal Act, Congress intended to provide the exclusive factual circumstances under which private parties can obtain damages because of secondary picketing and to exclude state power to impose damages against labor organizations for conduct falling short of the proscriptions of Section 303. The trial court made no finding of "employee inducement" required to support a state court award of damages under Section 303.

3. The trial court found that the picketing was in connection with a dispute over representation of employees and work assignment between the defendant Union

and the Seven Up Employees' Association. The subject of damages to private parties arising from jurisdictional disputes over work assignments is regulated comprehensively under Section 303(a)(4) and (b) of the National Labor Relations Act. Here again the absence of state court findings that the Union "induced and encouraged employees' forecloses a damage award under the Federal Act and raises the question as to whether a state may expand the scope of jurisdictional disputes for purposes of private damages beyond the limited proscriptions contained in Section 303(a)(4) and (b) of the Federal Act.

None of the foregoing important questions of law are presented on the record or in the briefs filed in the *Garmon* case, No. 66, October Term, calendared for argument on January 19, 1959.

Respectfully submitted,

STEVENSON & HACKLER,

JOHN C. STEVENSON,

CLARENCE E. TODD,

CHARLES K. HACKLER,

By HERBERT M. ANSELL,

Attorneys for Defendants and Appellants.

HERBERT M. ANSELL,

Of Counsel.